



JAN 05 1993

John J. Trela
Director
Division of Hazardous Waste Management
New Jersey Department of
Environmental Protection
104 East State Street
Trenton, New Jersey 08625

Dear Mr. Trela:

This will confirm comments I have made in recent conversations with several members of the New Jersey Department of Environmental Protection ("DEP") staff. As I believe you are aware, a Superfund Remedial Investigation and Feasibility Study is currently being performed at the ICI/Carlstadt site. The study is being carried out by a group of responsible parties pursuant to an administrative order issued by this agency.

During the course of the study it has been determined that soils at the site are contaminated with hazardous substances. In order to complete the Feasibility Study, various options for treatment of these soils must be evaluated for efficacy and reliability. The responsible parties will contract with four laboratories for performance of the necessary analyses to support this evaluation. Each laboratory will require approximately 240 kilograms of soil from the site, on which it will perform certain treatment and then carry out chemical analyses to characterize any remaining hazardous constituents. Upon completion of the analytical work, the samples will be returned to the Carlstadt site.

A question has arisen concerning the application of State and Federal hazardous waste rules to the shipment of these samples to and from the laboratories in question. As you know, hazardous wastes must usually be sent from their point of generation to a treatment, storage or disposal ("TSD") facility which is permitted or has interim status.

Federal and State rules exempt from this requirement any samples being sent to and from laboratories for the purpose of characterizing the wastes. Normally, however, such laboratory samples are small -- a few gallons, at most. Soil samples collected for analysis in treatability studies, such as those in question here,

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are often substantially larger. Questions have therefore been raised in the past as to the applicability of the so-called "laboratory sample" exemption to such larger treatability study samples.

To remove this ambiguity, EPA recently promulgated a regulation specifically addressing the treatability sample question, and exempting such samples in much the same way as was previously done for laboratory samples generally. (53 Fed. Reg. 27290, July 19, 1988.) EPA encouraged authorized States to promulgate comparable clarifying rules; it is our understanding that New Jersey is presently preparing such a regulation.

It is our view that, although these clarifying rule revisions are highly desirable, until such time as they have been promulgated, bona fide treatability study samples, collected at cleanup sites and shipped to laboratories for treatment and analysis, may properly be viewed as falling within the existing laboratory sample exemption. That is, such samples may be shipped to and returned from the testing laboratories without the need for a hazardous waste manifest, and the laboratories themselves need not be TSD facilities with permits or interim status.

We understand that you are in agreement with our views. Accordingly, we will advise the responsible parties working at the SCP/Carlstadt site that they may proceed with shipment of the soil samples to the testing laboratories under the terms of the existing laboratory sample exemption.

I appreciate your assistance, and that of your staff and colleagues, in resolving this matter. If you have any questions, please do not hesitate to call me at (212) 264-1018.

Sincerely,

Walter E. Lugdan
Deputy Regional Counsel
Office of Regional Counsel

cc: Gerry Burke, Esq.
Director, Division of Regulatory Affairs

Carl Will, Esq.
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cc: Janet Feldstein, 2EPED-SCB
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